

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TARA DECOSTER,

Plaintiff,

v.

Case No. 21-cv-10896
Honorable Victoria A. Roberts

DOLGENCORP, LLC d/b/a
DOLLAR GENERAL,

Defendant.

_____ /

AMENDED ORDER DENYING DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT [ECF No. 15]

Dolgencorp, LLC d/b/a Dollar General ("DG") sought summary judgment in this premises liability suit with the judicially-created open and obvious doctrine front and center. DG argued that an open and obvious hazard caused Tara Decoster's injury, and under Michigan law, she could not recover. [ECF No. 15]

Decoster argued that the open and obvious doctrine was unsettled law and highlighted three cases pending before the Michigan Supreme Court that appeared poised to clarify the doctrine: (1) *Pinsky v. Kroger Co. Of Michigan*, SC 163430, (2) *Kandil-Elsayed v. F&E Oil, Inc.*, SC162907, and (3) *Becker v. Enterprise Leasing Co. of Detroit, LLC*, SC 163702. Decoster asked the Court to consider the Michigan Supreme Court's forthcoming

decisions before ruling. [ECF No.18, 20]. The Court agreed that the law was unsettled and elected to stay this case pending the outcome of those cases. [ECF No. 22]

On July 28, 2023, the Michigan Supreme Court issued an opinion on *Pinsky* and *Kandil-Elsayed*. The Michigan Supreme Court held that the open and obviousness of a hazard is no longer a complete bar to recovery and elected to follow the comparative fault method stated in the Second Restatement of Torts. See *Kandil-Elsayed v. F & E Oil, Inc.*, No. 162907, 2023 WL 4845611 (Mich. July 28, 2023).

In light of these decisions, the Court held a status conference on August 2, 2023 and counsel acknowledged that, under the Michigan Supreme Court's clarification, DG could not sustain its motion for summary judgment on open and obvious grounds. DG's motion also raised a notice argument. However, at the status conference, DG appears to have relinquished that argument for the time being.

Accordingly, the Court **DENIES** DG's motion for summary judgment but will allow DG to raise its notice argument again if the parties are not able to settle.

IT IS ORDERED.

s/ Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: 8/2/2023